No. 15-474

In the Supreme Court of the United States

ROBERT F. MCDONNELL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly upheld the jury's finding that the petitioner's quid pro quo bribery scheme violated the honest-services statute, 18 U.S.C. 1346, and the Hobbs Act, 18 U.S.C. 1951, because the things petitioner agreed to do in exchange for payoffs were "official actions."

2. Whether the court of appeals correctly found no abuse of discretion in the district court's voir dire on pretrial publicity, where all potential jurors answered written questions about the nature and extent of their exposure to publicity and where the court individually questioned each juror petitioner identified as cause for concern.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-79a) is reported at 792 F.3d 478. The opinion of the district court (Pet. App. 80a-114a) is reported at 64 F. Supp. 3d 783.

JURISDICTION

The judgment of the court of appeals was entered on July 10, 2015. A petition for rehearing was denied on August 11, 2015 (Pet. App. 135a-136a). The petition for a writ of certiorari was filed on October 13, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioner was convicted on one count of conspiracy to commit

honest-services wire fraud, in violation of 18 U.S.C. 1349; three counts of honest-services wire fraud, in violation of 18 U.S.C. 1343; one count of conspiracy to obtain property under color of official right, in violation of 18 U.S.C. 1951; and six counts of obtaining property under color of official right, in violation of 18 U.S.C. 1951. Petitioner was sentenced to 24 months of imprisonment. The court of appeals affirmed. Pet. App. 1a-79a.

1. In 2011 and 2012, while petitioner was the Governor of Virginia, he and his wife Maureen McDonnell solicited and secretly accepted more than $175,000 in money and luxury goods from Jonnie Williams, a Virginia businessman. In exchange, petitioner agreed to use the power of his office to help Williams seek favorable actions from the Virginia government.

a. In January 2010, when petitioner became Governor, he and his family were in considerable financial distress. Petitioner and Mrs. McDonnell had nearly $75,000 in credit-card debt, which later grew to $90,000. Petitioner and his sister were also losing $40,000 each year on two heavily mortgaged rental properties and had been forced to borrow $160,000 to meet expenses. Pet. App. 5a; C.A. App. 6504-6506, 6510-6512.

Williams was the CEO of Star Scientific (Star), a Virginia company that made a dietary supplement called Anatabloc. Anatabloc contained anatabine, a purportedly anti-inflammatory compound found in tobacco. Star wanted to ask the Food and Drug Administration (FDA) to approve Anatabloc as a pharmaceutical, which would have allowed Star to advertise its ostensible therapeutic effect. But Star could not afford the clinical tests required for an FDA ap-

plication. Williams therefore wanted Virginia's state medical schools to conduct some of the necessary studies. Pet. App. 5a-6a; C.A. App. 3894-3897

b. In December 2009, petitioner and Mrs. McDonnell had dinner with Williams to thank him for donating the use of his private jet to petitioner's gubernatorial campaign. Petitioner barely knew Williams, and Mrs. McDonnell was meeting him for the first time. Nevertheless, Williams offered to buy Mrs. McDonnell a designer dress for petitioner's inauguration. She accepted, but petitioner's staff later told Williams he could not make the gift. Pet. App. 6a-7a & n.3.

In October 2010, petitioner used Williams's plane to travel to California and Williams arranged to accompany him on the return trip. During the flight, Williams "extolled the virtues of Anatabloc" and "explained that he needed [petitioner's] help." Pet. App. 7a. Williams then told petitioner "what [he] needed" from him: Williams "needed testing and [he] wanted to have [it] done in Virginia." C.A. App. 2211. Petitioner referred Williams to Dr. William Hazel, Virginia's Secretary of Health and Human Resources, but took no further action at that time. Pet. App. 7a.

In April 2011, Mrs. McDonnell called Williams and told him that she would seat him next to petitioner at a political event if Williams took her shopping. Williams agreed. He spent approximately $20,000 on luxury clothing for Mrs. McDonnell during a Manhattan shopping spree and sat with the couple at the event that evening. Days later, petitioner and Mrs. McDonnell invited Williams to a private dinner at the Governor's Mansion. Their discussion at the dinner "centered on Anatabloc and [Star's] need for independent testing." Pet. App. 7a-8a.

Three days later, Williams returned to the Mansion to see Mrs. McDonnell. The night before, petitioner had contacted his sister for information about their rental properties and asked his daughter about bills for her upcoming wedding. Pet. App. 8a-9a. When Mrs. McDonnell saw Williams, she described the family's financial troubles, including the rental properties. *Id.* at 9a. She then proposed an exchange, telling Williams: "I have a background in nutritional supplements and I can be helpful to you with this project, with your company. The Governor says it's okay for me to help you * * * but I need you to help me. I need you to help me with this financial situation." C.A. App. 2231. Mrs. McDonnell asked Williams for a $50,000 loan and added that she and petitioner owed $15,000 for their daughter's wedding. Pet. App. 9a.

Williams agreed to provide the loan and make the $15,000 payment. Before doing so, he spoke to petitioner to "make sure [he] knew about it"; petitioner thanked him for his help. C.A. App. 2233. Williams testified that he agreed to Mrs. McDonnell's request for money because "[petitioner] control[led] the medical schools" in Virginia and he "needed [petitioner's] help with the testing." *Id.* at 2234.

c. Over the next 18 months, Williams provided petitioner and his family with another $80,000 and tens of thousands of dollars' worth of luxury goods and services. For example:

- On three occasions, Williams paid for petitioner and his family to golf, eat, and shop at a private club. The outings, which Williams did not join, cost more than $5000. Pet. App. 10a, 13a, 15a.

- In July 2011, Williams allowed petitioner's family to use his vacation home. Williams spent $2000 to rent a boat for the family and—at Mrs. McDonnell's request—paid $600 to have his Ferrari delivered to the home for petitioner's use. Pet. App. 11a-12a.

- In August 2011, again at Mrs. McDonnell's request, Williams bought a $6000 Rolex watch for petitioner. Pet. App. 13a.

- Between January and March 2012, petitioner arranged for Williams to make a second loan of $50,000. Pet. App. 15a-16a.

- In May 2012, petitioner texted Williams seeking "another 20k loan." Minutes later, Williams responded: "Done." Gov't C.A. Supp. App. 166-167.

- In July 2012, Williams texted petitioner: "If you need cash let me know" and suggested a vacation at a Massachusetts resort. Williams spent more than $7300 on petitioner and Mrs. McDonnell during the trip. Pet. App. 19a.

- In December 2012, Williams gave another one of petitioner's daughters a $10,000 wedding gift. Pet. App. 20a.

The loans were not documented, and petitioner made no payments before learning he was under investigation. C.A. App. 4276, 6829. With the exception of some small-dollar items he could not have concealed, petitioner did not disclose the gifts and loans to his

staff or to the public. Gov't C.A. Br. 34-35. Williams hid them too, believing that they were "wrong" and that he "could be violating laws." C.A. App. 2322.

d. While petitioner was soliciting and receiving those personal benefits from Williams, he used the power of his office to influence Virginia officials to accord Williams favorable treatment.

In May 2011, three days after Williams agreed to provide the initial $65,000, petitioner brought up Anatabloc in a meeting with Secretary Hazel and directed his assistant to send Hazel an article praising Star. Pet. App. 9a. In June 2011, in response to Mrs. McDonnell's request that he "put in writing what it was that [he] wanted," Williams sent petitioner a formal protocol for a clinical trial. C.A. App. 2252; see *id.* at 3423. The cover letter "suggest[ed] that [petitioner] use the attached protocol to initiate the 'Virginia study' of Anatabloc at the Medical College of Virginia [(MCV), the medical school at Virginia Commonwealth University (VCU)] and the University of Virginia" (UVA). Gov't C.A. Supp. App. 29. Petitioner forwarded the letter to Hazel. Pet. App. 11a.

In July 2011, the night after he drove Williams's Ferrari back to Richmond from Williams's vacation home, petitioner directed Hazel to have a deputy meet with Williams and Mrs. McDonnell the next morning "on the Star Scientific [A]natabloc[] trials" at UVA and VCU. Gov't C.A. Supp. App. 80. During the meeting, Williams reiterated his desire to have the universities study Anatabloc. Pet. App. 12a. The same day, Williams and Mrs. McDonnell met with a VCU researcher who "could cause studies to happen." C.A. App. 2273. Williams told the researcher that

"clinical testing of Anatabloc in Virginia was important to [petitioner]." Pet. App. 12a.

In August 2011, petitioner and Mrs. McDonnell hosted an event at the Mansion marking Anatabloc's launch for public sale. Pet. App. 13a. Although petitioner's political action committee paid for the event, state employees planned it. C.A. App. 3592. Williams and Star set the guest list, which included the UVA and VCU researchers who would decide whether to conduct the studies Williams sought. Pet. App. 13a. Mrs. McDonnell explained to the Mansion staff that the purpose of the event was to "encourag[e] [the] universities to do research on [Anatabloc]." C.A. App. 3608. During the event, which petitioner and Mrs. McDonnell attended, Williams gave $25,000 checks to the state researchers to help them apply for grants to fund the studies. Pet. App. 13a. The grants were to come from the Virginia Tobacco Indemnification and Community Revitalization Commission (Tobacco Commission), a state entity that petitioner told Williams "would be a good source of funding." C.A. App. 2260.

In late 2011, Star's plans hit a stumbling block when UVA and VCU seemed to lose interest. C.A. App. 2305-2306. Williams was "furious," telling colleagues that he could not understand the universities' reluctance because "[petitioner] and his wife [we]re so supportive." *Id.* at 3934; see Pet. App. 14a.

In January 2012, while he was arranging to loan petitioner another $50,000, Williams told Mrs. McDonnell that UVA was dragging its feet. Pet. App. 15a. Mrs. McDonnell, who was also "furious," later reported to Williams that petitioner "want[ed] the contact information" of the UVA officials Star was

dealing with. C.A. App. 2308-2309. Mrs. McDonnell forwarded that information to petitioner and his chief counsel, Jacob Jasen Eige, on February 9. Pet. App. 17a. A day later, while sitting next to petitioner, Mrs. McDonnell emailed Eige that petitioner "want[ed] to know why nothing has developed w[ith the] studies" and "want[ed] to get this going w[ith] VCU MCV" Gov't C.A. Supp. App. 154. Six days after that—and minutes after checking with Williams about the pending loan—petitioner himself emailed Eige to follow up: "Pl[ease] see me about [A]natabloc issues at VCU and UVA." *Id.* at 157; see Pet. App. 17a.

Around the same time, the Mansion staff was planning a reception for leaders in Virginia's healthcare industry. Petitioner and Mrs. McDonnell invited Williams and other Star employees. At Williams's request, they also invited the state researchers Star was lobbying to conduct studies. Pet. App. 16a-17a.

In addition to seeking clinical tests at UVA and VCU, Williams had told state officials and Mrs. McDonnell that he wanted Virginia's employee health plan to encourage state employees to take Anatabloc. C.A. App. 2271, 3054, 3692-3693. In March 2012, petitioner met with the Virginia Secretary of Administration, who oversaw the plan. Pet. App. 18a. During a discussion about the plan's coverage, petitioner "reached into his pocket, retrieving a bottle of Anatabloc." *Ibid.* He stated that Anatabloc was "working well for him, and that he thought it would be good for * * * state employees." C.A. App. 4227. He then asked the Secretary to meet with Star. *Ibid.*

2. A jury convicted petitioner on 11 counts of honest-services fraud, Hobbs Act extortion, and con-

spiracy, but acquitted on two counts of making false statements to a bank. Pet. App. 21a & n.9.[1]

3. The court of appeals affirmed. Pet. App. 1a-79a.

a. Petitioner's principal arguments on appeal centered on the "official action" requirement of the corruption charges. The parties agreed that the Hobbs Act and honest-services counts required proof that petitioner accepted something of value in exchange for agreeing to perform "official actions" (or "official acts") as defined in the federal bribery statute, 18 U.S.C. 201. Pet. App. 46a.[2] Under Section 201, an "official act" includes "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity." 18 U.S.C. 201(a)(3).

The district court instructed the jury using the Section 201 definition. Pet. App. 275a. It added that official actions can include actions that a public official "customarily performs" in addition to duties assigned

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[1] The jury convicted Mrs. McDonnell on 8 of the 11 corruption charges and a separate obstruction-of-justice count. C.A. App. 7710-7713. Her appeal remains pending. No. 15-4116 (filed Feb. 27, 2015).

[2] The honest-services statute clarifies that mail and wire fraud include schemes to defraud others of the "intangible right of honest services." 18 U.S.C. 1346. This Court has limited the statute to "bribery and kickback schemes" and held that, in the bribery context, the statute "draws content" from Section 201. *Skilling* v. *United States*, 561 U.S. 358, 368, 412 (2010). The Hobbs Act prohibits obtaining property from another "under color of official right." 18 U.S.C. 1951(b)(2). A public official violates the Hobbs Act if he "obtain[s] a payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans* v. *United States*, 504 U.S. 255, 268 (1992).

by law; that the official need not "have actual or final authority over the end result sought by a bribe payor" if the payor "reasonably believes that the public official had influence, power or authority" over a means to that end; and that an official action can include "one in a series of steps to exercise influence or achieve an end." *Ibid.* The court of appeals held that those instructions were consistent with Section 201 and with this Court's relevant decisions. *Id.* at 47a-65a.

The court of appeals also held that the evidence "was more than sufficient to support the jury's verdict." Pet. App. 74a; see *id.* at 69a-74a. The court emphasized that the government was not required "to prove that [petitioner] actually took [an] official action." *Id.* at 71a. Instead, all that was necessary was proof that petitioner's corrupt agreement with Williams "carried with it an expectation that some type of official action would be taken." *Ibid.* But the court concluded that "the Government exceeded its burden" by proving that petitioner "did, in fact, use the power of his office to influence governmental decisions." *Ibid.* In particular, the court held that petitioner encouraged state researchers to study Anatabloc and urged the relevant officials to cover Anatabloc under the state health plan. *Id.* at 71a-74a.

b. Finally, the court of appeals rejected petitioner's challenge to the district judge's voir dire on pretrial publicity. Pet. App. 26a-32a. The court noted that all prospective jurors completed written questionnaires describing their exposure to publicity. *Id.* at 28a-29a. The court also emphasized that, after asking the jurors collectively whether they could put aside anything they had heard and render a verdict based on the evidence, the judge "invited defense

counsel to identify any specific veniremen it would like to question further." *Id.* at 30a. The judge individually questioned each juror identified by the defense, concluding the process only when petitioner's counsel stated that he did not wish to question "[a]nybody else." *Id.* at 172a; see *id.* at 30a-32a. That approach, the court held, was within the judge's "wide discretion" over voir dire. *Id.* at 28a (citation omitted).

ARGUMENT

Petitioner renews his contentions (Pet. 11-36) that the actions Williams paid him to take were not "official" and that the district court's voir dire violated the Sixth Amendment. Those claims lack merit. The court of appeals upheld petitioner's convictions based on the unexceptionable proposition that a public official violates federal corruption statutes where, as here, he accepts personal benefits in exchange for his agreement to influence government matters. That standard is well-established, administrable, and entirely consistent with the decisions of this Court and other courts of appeals. Nor did the district court abuse its broad discretion in structuring voir dire; petitioner cites no decision supporting his assertion that the Sixth Amendment mandated his preferred procedures. The petition should be denied.

1. Petitioner principally contends (Pet. 11-29) that the court of appeals adopted an overbroad interpretation of "official action." His essential premise—and the basis for nearly every argument in the petition and supporting amicus briefs—is that the court held that he was properly convicted even though he "never agree[d] to put a thumb on the scales of any government decision." Pet. 2; see, *e.g.*, Pet. i, 1, 11, 16, 18, 21. That premise is wrong. As the court repeatedly ex-

plained, it upheld petitioner's convictions because the evidence showed that he agreed to "use the power of his office to influence governmental decisions." Pet. App. 71a; accord *id.* at 54a-55a, 73a-74a.

Petitioner concedes (Pet. 22) that the quoted holding correctly states the law. Despite its sweeping rhetoric, therefore, the petition largely reduces to a claim that the court of appeals misapplied that "properly stated rule of law," Sup. Ct. R. 10, to the particular circumstances of this case. That claim is both factbound and incorrect. The evidence at trial amply supported the jury's finding that Williams lavished gifts on petitioner not to obtain the sort of general "access" commonly provided to campaign donors, but rather in exchange for petitioner's agreement to use his position to influence state officials to dispose of government matters in a manner favorable to Williams. Reaffirming that such quid pro quo agreements are unlawful poses no threat to legitimate political activity.

a. Petitioner no longer challenges the jury's findings that he solicited and accepted payments from Williams as part of a quid pro quo exchange, and that he did so corruptly, in bad faith, and with intent to defraud. Pet. App. 65a-69a, 74a-79a. The evidence was likewise sufficient to support the jury's finding that the actions petitioner agreed to take in return were "official."

i. Under Secti :01, an "official act" is "[1] any decision or action on [2] any question, matter, cause, suit, proceeding or controversy" that may be brought before a public official in his official capacity. 18 U.S.C. 201(a)(3). Only the first element is disputed here. As to the second, the court of appeals identified

three relevant "questions or matters": whether state universities would study Anatabloc; whether the state Tobacco Commission would fund the studies; and whether the state health plan would cover Anatabloc. Pet. App. 69a-70a. Petitioner does not deny that those matters satisfy Section 201. The only question is thus whether he agreed to make a "decision" or take "action" "on" any of them. *Id.* at 71a.

As the court of appeals explained, a public official need not dictate the disposition of a matter to take official action. Pet. App. 54a-58a. That has been clear since this Court's seminal decision in *United States* v. *Birdsall*, 233 U.S. 223 (1914). There, the Court held that officers appointed by the Commissioner of Indian Affairs could be charged under Section 201's materially identical predecessor statute for accepting bribes in connection with sentencing and clemency. *Id.* at 227-228. The officers had no formal authority over those matters; instead, they made recommendations to the Commissioner, who, in turn, was customarily consulted by judges and the President. *Id.* at 228-229. This Court nonetheless held that the officers were properly charged with bribery because their twice-removed recommendations were "official actions." *Ibid.*

It has thus been settled for more than a century that the federal bribery statute "cover[s] any situation in which the advice or recommendation of a Government employee would be influential," even if the employee does not "make a binding decision." *United States* v. *Carson*, 464 F.2d 424, 433 (2d Cir.), cert. denied, 409 U.S. 949 (1972); see, *e.g.*, *United States* v. *Dimora*, 750 F.3d 619, 627 (6th Cir.), cert. denied, 135 S. Ct. 223, and 135 S. Ct. 504 (2014); *United States* v.

Ring, 706 F.3d 460, 470 (D.C. Cir.), cert. denied, 134 S. Ct. 175 (2013).

ii. Petitioner maintains (Pet. 11-12, 22-25) that he did not seek to influence any of the matters identified by the court of appeals. That is wrong. See pp. 16-21, *infra*. But it is also irrelevant. As the court held, and as the jury was instructed, "it was not necessary for the Government to prove that [petitioner] actually took [an] official action." Pet. App. 71a. Instead, the government only had to establish that petitioner's agreement with Williams carried "an expectation that some type of official action would be taken." *Ibid.*; see C.A. App. 7669, 7682 (instructions). Honest-services fraud and Hobbs Act extortion, like bribery, are "completed at the time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the *quid pro quo* is not an element of the offense." *Evans* v. *United States*, 504 U.S. 255, 268 (1992) (Hobbs Act); see *United States* v. *Brewster*, 408 U.S. 501, 526 (1972) (bribery); *Ring*, 706 F.3d at 467 (honest-services fraud).[3]

Ample evidence established that petitioner's quid pro quo arrangement with Williams carried an expectation that petitioner would influence government

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[3] Petitioner asserts—without citation or explanation—that "[b]y affirming the jury's general verdict, the panel necessarily held that all five" of the types of action described in the indictment "were 'official.'" Pet. 8. But because taking an official action was not an element of the charged offenses, neither the jury nor the court of appeals was required to find that *any* of those acts satisfied Section 201's standard. And in any event, "[w]hen a jury returns a guilty verdict on an indictment charging several acts in the conjunctive, * * * the verdict stands if the evidence is sufficient with respect to any one of the acts charged." *Griffin* v. *United States*, 502 U.S. 46, 56-57 (1991) (citation omitted).

matters. Williams was clear about what he wanted from the start. In October 2010, he told petitioner that "what [he] needed from [petitioner] was that [he] needed testing" at state medical schools. C.A. App. 2211. That need was a constant refrain in Williams's interactions with petitioner over the next two years. *E.g.*, Pet. App. 8a; C.A. App. 2259-2260. And in June 2011, at Mrs. McDonnell's request, Williams spelled it out in writing, asking petitioner to "initiate the 'Virginia Study' of Anatabloc at [VCU and UVA]." Gov't C.A. Supp. App. 29.

Williams testified that he provided petitioner with loans and gifts because "[petitioner] control[led] the medical schools" and he "needed [petitioner's] help with the testing." C.A. App. 2234; see, *e.g.*, *id.* at 2360. Williams explained that in return for his continued payoffs, he "expected" petitioner to continue "assisting with the universities" and "help[ing] with government employees." *Id.* at 2355. During the scheme, Williams told a Star lobbyist that petitioner wanted to have studies performed by UVA and VCU and funded by the Tobacco Commission. *Id.* at 4373; see *id.* at 3912-3919. And when the universities got cold feet, Williams told colleagues that he "c[ould]n't understand it" because "[petitioner] and his wife [we]re so supportive." *Id.* at 3934.

At trial, petitioner disputed Williams' version of their arrangement, adamantly insisting that he never promised Williams anything.[4] But "the jury was free to infer that [petitioner] was not requesting gifts of thousands of dollars without offering something more

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[4] Petitioner also maintained, implausibly, that Williams "really never asked [him] for anything" and that he did not even know what Williams wanted. C.A. App. 6253; see, *e.g.*, *id.* at 6231, 6973.

than his friendship in return." *United States* v. *Biaggi*, 853 F.2d 89, 100 (2d Cir. 1988), cert. denied, 489 U.S. 1052 (1989). And petitioner's contemporaneous statements confirmed that he shared Williams' understanding of their bargain. After Williams reported that the universities were moving slowly, petitioner assured Williams "that he was following up with UVA" about the delay and then immediately requested "more money." C.A. App. 2697; see *id.* at 2325-2326.

iii. Petitioner's claim that he did not actually help Williams is thus beside the point. A public official who secures a bribe by agreeing to exercise influence is guilty even if he later "defaults on his illegal bargain." *Brewster*, 408 U.S. at 526. Here, however, petitioner followed through on the quid pro quo.

First, petitioner "exploited the power of his office" in an "ongoing effort to influence the work of state university researchers." Pet. App. 73a. For example, he directed Hazel to send a deputy to a meeting at the Governor's Mansion "on" the proposed Anatabloc tests—the only time the official attended such a meeting. C.A. App. 3055. Petitioner and Mrs. McDonnell hosted an event at the Mansion designed to "encourag[e] [the] universities to do research on [Anatabloc]." *Id.* at 3608.[5] And after Williams complained that the universities were moving slowly, Mrs. McDonnell wrote to Eige, petitioner's chief counsel, that petitioner "want[ed] to get this going w[ith] VCU MCV" Gov't C.A. Supp. App. 154. Later, petitioner himself

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[5] Petitioner's briefing materials for the event show that he understood its purpose: He starred the names of the state researchers Williams was trying to persuade to conduct the studies. Gov't C.A. Supp. App. 107-108; C.A. App. 4123-4124.

followed up on that directive, telling Eige to "see [him]" about the studies. *Id.* at 157.

Second, during a meeting about the state employee health plan, which petitioner had ultimate power to approve, Pet. App. 70a, petitioner told the senior officials with immediate authority over the plan that Anatabloc "would be good for * * * state employees" and asked them to meet with Star. C.A. App. 4227. In so doing, petitioner "used his position as Governor to influence" the health plan's coverage. Pet. App. 74a.

iv. The court of appeals' holding is entirely consistent with *United States* v. *Sun-Diamond Growers of California*, 526 U.S. 398 (1999) (*Sun-Diamond*). There, the Court held that an illegal-gratuity conviction under Section 201 requires proof that a thing of value was given to an official because of a specific official act. *Id.* at 414. The Court observed that reading the statute to reach gifts given merely "by reason of the donee's office" could criminalize de minimis gifts, such as the President's receipt of a jersey from a visiting sports team, "a high school principal's gift of a school baseball cap to the Secretary of Education," during a school visit, or "a group of farmers * * * providing a complimentary lunch for the Secretary of Agriculture in conjunction with [a] speech." *Id.* at 406-407.

In the portion of *Sun-Diamond* on which petitioner relies (Pet. 12-14), the Court acknowledged that even its "more narrow interpretation," requiring a connection to a "specific" official act, would yield "peculiar results" if those hypothetical gifts could be viewed as having been given "'for or because of' the official acts of receiving the sports teams at the White House, visiting the high school, and speaking to the farmers."

526 U.S. at 407 (citation omitted). But the Court explained that "those actions—while they are assuredly 'official acts' in some sense—are not 'official acts' within the meaning of the statute, which * * * defines 'official act' to mean 'any decision or action on any question, matter, cause, suit, proceeding or controversy.'" *Ibid.* (citation omitted).

As the court of appeals explained, the activities described in *Sun-Diamond* are not decisions or actions "on" a government matter because they do not "have the purpose or effect of exerting * * * influence on" any matter. Pet. App. 54a. But nothing in *Sun-Diamond* calls into question *Birdsall*'s teaching that an official *does* take official action if he seeks to influence the disposition of government matters by other officials. 233 U.S. at 228-229.[6]

Here, petitioner's conduct was far removed from the activities contemplated in *Sun-Diamond*. Contrary to petitioner's assertion (Pet. 24), the court of appeals did not hold that merely "arranging a meeting" or "inquiring about an issue" supports an inference that an official sought to influence the underlying

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[6] Petitioner errs in asserting (Pet. 13) that the court of appeals' reasoning would mean that the Secretary of Agriculture takes official action if he "participate[s] in a 'roundtable' to listen to the[] policy views" of farmers. The question is whether *the official* seeks to influence a government matter. The farmers may hope to persuade the Secretary to dispose of policy matters in a particular way. But by listening to their views, *the Secretary* neither acts on any policy matter himself nor seeks to influence the disposition of such a matter by other officials. If, in contrast, the Secretary directed a subordinate to meet with the farmers under circumstances that made clear that he wanted the subordinate to dispose of a pending matter according to the farmers' wishes, he would unquestionably have taken official action. That is this case.

matter. Petitioner did far more than that. Before asking a member of his cabinet to meet with Star about including Anatabloc in the state health plan, for example, petitioner told her that Anatabloc "would be good for * * * state employees." C.A. App. 4227. In so doing, he recommended a particular substantive result. Petitioner also gave over the Governor's Mansion and its staff to an event crafted to "encourag[e] [the] universities to do research on [Anatabloc]." *Id.* at 3608. And petitioner did not merely ask Eige to "see [him] about [A]natabloc issues at VCU and UVA." Gov't C.A. Supp. App. 157. He did so days after his wife and co-conspirator directed Eige to follow up with VCU and UVA because "Gov wants to get this going w[ith] [the universities]." *Id.* at 154. Petitioner characterizes his actions as providing mere "procedural access" (Pet. 24) only by stripping them of all context.

v. Petitioner's remaining challenges to the sufficiency of the evidence lack merit. He asserts (Pet. 22-25) that he never expressly ordered state employees to initiate clinical studies or to include Anatabloc in the state health plan. But a corrupt official can exercise influence without telling subordinates, in so many words, "I am directing you to give my benefactor what he wants." In this context as in others, "[t]he criminal law * * * concerns itself with motives and consequences, not formalities. And the trier of fact is quite capable of deciding the intent with which words were spoken or actions taken." *Evans*, 504 U.S. at 274 (Kennedy, J., concurring in part and concurring in the judgment); see *Rosemond* v. *United States*, 134 S. Ct. 1240, 1250 n.9 (2014).

Relatedly, petitioner asserts more than a dozen times that he never "pressured" state employees. *E.g.*, Pet. i, 1-5, 11, 18, 22-23, 25. But "pressure" is not required. The officers in *Birdsall*, for example, did not "pressure" sentencing judges or the President. 233 U.S. at 228-229; see, *e.g.*, *Ring*, 706 F.3d at 470. The question is whether petitioner sought to *influence* the relevant matters. And the power of a State's chief executive to influence his subordinates does not require overt "pressure."

The jury heard from a Star lobbyist that "it's always helpful" to have the Governor's support when seeking action from state agencies. C.A. App. 4373. Petitioner's chief of staff confirmed that if petitioner "encouraged somebody else in state government to do something," it would "[d]efinitely help[]." *Id.* at 4104. Here, the target officials got the message. Eige told Star's lobbyist that he had "been asked by the Governor to call [the universities]" to "show support for this research," but that Eige himself "d[id]n't think [the Governor's office] should be pressuring UVA and VCU." *Id.* at 4374. Secretary Hazel described petitioner's "level of support" for Star as "unique." *Id.* at 3766-3767. And when a UVA official wrote a pro/con list about possible studies of Anatabloc, the first "pro" was "[p]erception to Governor" and the first "con" was "[p]olitical pressure from Governor." Gov't C.A. Supp. App. 109; see C.A. App. 3355 (UVA researcher left the Mansion event thinking that petitioner had "extol[led] [studies on Anatabloc] as something that would be a good thing for the Commonwealth").

Petitioner also emphasizes (Pet. 23-25) that Williams did not ultimately get what he wanted. But the failure of a bribery scheme does not make it lawful.

See *Evans*, 504 U.S. at 268; *Brewster*, 408 U.S. at 526. And here, the scheme failed only because other officials resisted petitioner's influence. Eige refused to pressure the universities because he thought it was inappropriate. C.A. App. 3215-3216. Hazel was "very skeptical of Mr. Williams and his product" despite petitioner's unprecedented support. *Id.* at 3745-3746. And the officials responsible for the state health plan did not add Anatabloc because the plan did not cover dietary supplements. *Id.* at 4204. Williams was thwarted in spite of petitioner's efforts, not because petitioner failed to try.

b. Although petitioner principally challenges the sufficiency of the evidence, he also asserts (Pet. i, 25-26) that the district court erred by failing to instruct the jury that an official action must be "intended to * * * influence a specific official decision the government actually makes." Pet. App. 147a. That argument is unsound for three reasons.

First, petitioner's brief in the court of appeals focused on other asserted instructional errors and devoted only a single sentence to the "influence" language on which he now relies. Pet. C.A. Br. 53. Understandably, therefore, the court did not specifically address that language. Cf. *Eriline Co.* v. *Johnson*, 440 F.3d 648, 653 n.7 (4th Cir. 2006) (argument raised in a "single sentence" is forfeited).

Second, petitioner requested the quoted language as part of much longer instructions on "official action." Pet. App. 146a-149a, 253a-254a. The court of appeals correctly held that, "[t]aken as a whole," those instructions "failed to present the district court with a correct statement of law," and thus that the district court did not abuse its discretion in refusing to give

them. *Id.* at 65a; see *id.* at 63a (portions of petitioner's proposed instruction were "a thinly veiled attempt to argue the defense's case").

Third, the substance of petitioner's proposed language was captured by the instructions as given. That language was drawn from *Valdes* v. *United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc), which described official action as "inappropriate influence on decisions that the government actually makes." *Id.* at 1325. But *Valdes* was merely paraphrasing the statutory definition of "official act." In the very next paragraph, it explained that the instructional error in that case would have been cured by "includ[ing] either the statutory language on which [*Valdes*] focused—the definition of 'official act'—or anything comparable." *Ibid.*

Consistent with *Valdes*, the instruction given here began with a verbatim recitation of Section 201's "definition of 'official act.'" 475 F.3d at 1325; see Pet. App. 275a. That language made clear that official action includes only decisions or actions "on" government matters. Pet. App. 275a. And the remainder of the instruction reiterated that official action entails an effort to wield "influence, power or authority" or to "exercise influence or achieve an end." *Ibid.* Petitioner relied on that instruction to argue that none of his actions sought to influence any government matter. C.A. App. 7543-7551. The jury simply disagreed.[7]

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[7] Petitioner is wrong to suggest (Pet. 25-26) that the government argued to the jury that influence on a matter was unnecessary. The government emphasized, correctly, that the jury need not find that petitioner "pressured" government employees. Pet. App. 268a; see p. 20, *supra*. But the next sentence of the government's argument explained that petitioner *did* exercise influence. Pet. App. 268a ("[W]hen your boss is telling you to do something * * *

c. Petitioner and his amici err in asserting (Pet. 17-26) that the decision below conflicts with decisions of the First, Eighth, and D.C. Circuits.

United States v. *Urciuoli*, 513 F.3d 290 (1st Cir. 2008), held that the honest-services statute did not reach a part-time state legislator's conduct in "urging local officials to obey state law." *Id.* at 295. The court noted that the legislator had no direct authority over the officials and that his actions did not involve any "matter before him." *Ibid.* Here, by contrast, the matters in question were within petitioner's authority and the officials he sought to influence were his subordinates. Pet. App. 70a-71a.[8]

United States v. *Rabbitt*, 583 F.2d 1014 (8th Cir. 1978), cert. denied, 439 U.S. 1116 (1979), involved a legislator who accepted payments from an architectural firm in exchange for introducing it to the state officials responsible for architectural contracts. *Id.* at 1028. As the Eighth Circuit later explained, it reversed the legislator's convictions because he "promised only to introduce the firm to influential persons;

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he doesn't need to yell."). From the beginning of the trial, the government emphasized that petitioner's duty of honest services was "a duty not to sell the power and the influence of his office" and that petitioner had "influence over the very government officials" Williams was lobbying for favorable treatment. C.A. App. 1748, 1754-1755.

[8] Petitioner asserts (Pet. 25) that *Urciuoli* disapproved jury instructions like those given here. But the instructions in *Urciuoli* were "decidedly different." Pet. App. 53a n.18. They did not include anything like Section 201's definition of "official act" and instead required only a finding that the legislator acted "under the cloak of his office." *Urciuoli*, 513 F.3d at 295 n.2. And *Urciuoli* did not mandate any particular formulation, leaving that issue to the district court on remand. *Id.* at 297.

he did not promise to use his official position to influence those persons." *United States* v. *Loftus*, 992 F.2d 793, 796 (1993). Here, by contrast, the court of appeals held that petitioner agreed to—and then did—"use the power of his office to influence governmental decisions." Pet. App. 71a.

The D.C. Circuit's decision in *Valdes* held that a police officer did not take official action when he accepted gratuities for retrieving information from a police database. 475 F.3d at 1320-1322. The court concluded that the officer's conduct did not implicate any "'question, matter, cause, suit, proceeding or controversy'" because those terms include only "questions or matters whose answer or disposition is determined by the government." *Id.* at 1323-1324 (citation omitted). Here, the matters identified by the court of appeals—whether state universities would perform studies, whether a state commission would provide funding, and whether the state health plan would cover Anatabloc—plainly satisfied that standard. Pet. App. 69a-70a. Petitioner has not argued otherwise.

The decision below is thus consistent with *Urciuoli*, *Rabbitt*, and *Valdes*. And other decisions by the First, Eighth, and D.C. Circuits confirm that an official takes official action where, as here, he "act[s] in his official capacity to *influence*" the disposition of a government matter by others. *Ring*, 706 F.3d at 470; see *United States* v. *Potter*, 463 F.3d 9, 18 (1st Cir. 2006) ("informal and behind-the-scenes influence on legislation"); *Loftus*, 992 F.2d at 796 ("influence").[9]

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[9] Although petitioner does not cite them, other decisions have stated that, in some circumstances, "granting or denying access to lobbyists based on levels of campaign contributions is not an 'official act.'" *United States* v. *Carpenter*, 961 F.2d 824, 827 (9th

d. Petitioner is quite wrong to assert (Pet. 14-15, 27-29) that the decision below turns "nearly every elected official into a felon" by criminalizing routine political fundraising. Pet. 27 (capitalization altered). The court of appeals held that petitioner's conduct was criminal because he entered into a quid pro quo agreement to use his position to influence government matters on behalf of his benefactor. Such conduct is neither common nor protected by the First Amendment—and a decision confirming that it is unlawful breaks no new ground.

"[C]onstituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." *McCutcheon* v. *FEC*, 134 S. Ct. 1434, 1441 (2014). This Court's campaign-finance decisions have thus emphasized that the "[i]ngratiation and access" commonly associated with political contributions "are not corruption." *Ibid.* (quoting *Citizens United* v. *FEC*, 558 U.S. 310, 360 (2010)). But those decisions referred to "the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford." *Ibid.* The Court has emphatically distinguished that sort of *general* gratitude and access from *specific* quid pro quo arrangements, explaining that "[t]he hallmark of corruption is

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Cir.), cert. denied, 506 U.S. 919 (1992); cf. *United States* v. *Sawyer*, 85 F.3d 713, 731 n.15 (1st Cir. 1996). Those decisions, too, are consistent with the decision below. Petitioner was not convicted for giving Williams access to his own time; he was convicted for agreeing to use his authority to influence the disposition of government matters by others. That is unquestionably official action. See *Carpenter*, 961 F.2d at 827 ("[A]greeing to intervene with one's colleagues to secure their support for legislation involves an 'official act.'").

the financial *quid pro quo*: dollars for political favors." *Ibid.* (citation omitted); see *Citizens United*, 558 U.S. at 357 ("[F]ew if any contributions to candidates will involve *quid pro quo* arrangements.").

The existence of a quid pro quo is thus the key to distinguishing between lawful campaign contributions and unlawful bribes. "A donor who gives money in the hope of unspecified future assistance does not agree to exchange payments for actions. No bribe thus occurs if the elected official later does something that benefits the donor." *United States* v. *Terry*, 707 F.3d 607, 613 (6th Cir. 2013), cert. denied, 134 S. Ct. 1490 (2014). Instead, "[i]t is the corrupt *agreement*," made at the time of the contribution, "that transforms the exchange from a First Amendment protected campaign contribution and a subsequent [action] by a grateful [official] into an unprotected crime." *United States* v. *Siegelman*, 640 F.3d 1159, 1173 n.21 (11th Cir. 2011), cert. denied, 132 S. Ct. 2711, and 132 S. Ct. 2712 (2012); see *Ring*, 706 F.3d at 468 ("It is this *mens rea* element that distinguishes criminal corruption from commonplace political and business activities.").

The presence of a quid pro quo distinguishes unlawful bribery from petitioner's real and hypothetical examples (Pet. 27-29) of benefits conferred on political contributors. Petitioner also observes (Pet. 28) that some fundraising events could be characterized as explicit exchanges of contributions for "access" to candidates *at the events themselves*. But those events do not involve "official action" because the participating officials are not acting in their official capacities and are not seeking to influence the disposition of government matters. Those distinctions are critical. It is perfectly appropriate—indeed, protected by the

First Amendment—for a candidate to host a fundraiser that costs $1000 to attend. But petitioner goes badly astray when he asserts (Pet. 14) that this Court's decisions establish "a fundamental constitutional right" to demand such a contribution as the price of an official government meeting—much less to auction off influence over government matters.

In a corruption case involving campaign contributions, the instructions should "carefully focus the jury's attention on the difference between lawful political contributions and unlawful extortionate payments and bribes" to ensure that the jury does not infer a quid pro quo merely because an elected official took actions favorable to a contributor. *United States* v. *Biaggi*, 909 F.2d 662, 695 (2d Cir. 1990), cert. denied, 499 U.S. 904 (1991); cf. *McCormick* v. *United States*, 500 U.S. 257, 271-273 (1991). But this case raises no such concern: The charged payoffs were personal loans and luxury goods, not campaign contributions. And even more to the point, petitioner no longer challenges the jury's finding that his arrangement with Williams was a quid pro quo, entered into corruptly, in bad faith, and with intent to defraud. Pet. App. 74a-79a & n.23. This case is not about "ingratiation and access."

e. Petitioner and his amici do not contend that politicians routinely sell their influence over government matters. Nor does petitioner suggest that construing the Hobbs Act and the honest-services statute to cover such conduct raises any concern about the rule of lenity, federalism, or vagueness. Cf. Pet. 15-17. Indeed, petitioner has consistently conceded that "the use of one's office to make *or influence* governmental decisions" is an "official act." C.A. App. 5136 (empha-

sis added); Pet. C.A. Br. 28 (similar). But that is precisely the rule the court of appeals applied, holding after a careful review of the record that petitioner was properly convicted because he "use[d] the power of his office to influence governmental decisions." Pet. App. 71a; see *id.* at 73a (petitioner sought to "influence the work of state university researchers"); *id.* at 74a (petitioner "used his position as Governor to influence" the state health plan). Petitioner's factbound contention that the court departed from that standard in applying it to this case ignores the trial record and the deference due to the jury's verdict. It does not warrant this Court's review.

2. Petitioner also contends (Pet. 30-36) that the district court's voir dire on pretrial publicity violated the Sixth Amendment. That argument rests on a distortion of the jury-selection process.

a. During voir dire, the district court asked prospective jurors to stand if they had "read, heard, or seen something" about the case. Pet. App. 160a. The court then asked the standing jurors to sit if they could put aside what they had heard and decide the case based on the evidence. *Ibid.* Petitioner attacks the voir dire as if that exchange were the *only* measure the court took to identify jurors biased by pretrial publicity. But as the court of appeals explained, the district court "did a good deal more." *Id.* at 28a.

The process began with a questionnaire distributed to 650 prospective jurors. That questionnaire included nine questions about media consumption and four questions about case-specific publicity. C.A. App. 584-585, 592-593. Among other things, prospective jurors were asked which news sources they watched or read; whether they had "seen, heard or read anything about

this case"; and "[h]ow closely" they had followed news about the case. *Id.* at 584, 592. They were also asked to identify the sources from which they had heard about the case and to state whether they had "expressed an opinion about this case or about those involved." *Id.* at 593.

Some potential jurors were eliminated based on their questionnaires. Petitioner asserted that the district court was required to individually question every one of the remaining 142 jurors who had heard anything about the case. Pet. App. 159a; see *id.* at 151a-154a (petitioner's 16 proposed questions). The court declined to do so. *Id.* at 159a-160a. But it did not rely on collective questioning alone. Instead, after asking the "general question" described above, the court invited petitioner's counsel to identify any "specific folks who we need to look at specific responses" to additional questions. *Id.* at 160a-161a; see *id.* at 160a (advising the venire that questioning on publicity "[wa]s going to take a while").

The district court then "brought to the bench each juror that [petitioner's] counsel identified as cause for concern and questioned each about his or her opinion of the case and ability to remain impartial," ultimately excusing two of the eight jurors on its own motion. Pet. App. 99a-100a; see *id.* at 160a-170a. When the court asked whether petitioner's counsel wished to question "[a]nybody else," counsel responded: "Not on publicity." *Id.* at 172a.

Accordingly, although the district court declined to individually question every member of the panel who had heard something about the case, it gave petitioner the opportunity to identify "any specific veniremen" for further inquiry based on their questionnaires—

which revealed whether and how they had followed news about the case. Pet. App. 30a.[10] The court of appeals correctly concluded that this procedure fell comfortably within the "wide discretion granted to the trial court in conducting *voir dire* in the area of pre-trial publicity." *Mu'Min* v. *Virginia*, 500 U.S. 415, 427 (1991). And the jurors who were seated had only limited exposure to publicity: A majority had either seen nothing about the case or followed it "[n]ot at all"; only one had followed it even "[s]omewhat closely." Pet. C.A. Supp. App. 104, 131, 185, 239, 266, 320, 347, 374, 401, 428, 455, 482.

b. Petitioner contends (Pet. 32) that he is entitled to a new trial because the district court did not ask all prospective jurors whether they had formed opinions about the case. But the Constitution does not require exclusion of jurors who have such views. Indeed, "scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of [a high-profile] case." *Irvin* v. *Dowd*, 366 U.S. 717, 722 (1961). The relevant question is not whether the members of the venire have views, but rather whether they have "such fixed opinions that they could not judge impartially the guilt of the defendant." *Mu'Min*, 500 U.S. at 430 (citation omitted).

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[10] Petitioner erroneously asserts (Pet. 31 n.3) that the district court "refused to question one juror" identified by his counsel. Petitioner's counsel asked that Juror 455 be questioned because of a particular answer on her questionnaire. Pet. App. 161a. When Juror 455 came to the bench, the government noted that counsel had been mistaken about that answer. *Id.* at 164a. The court did not refuse to question the juror; instead, it appears that petitioner's counsel withdrew the request. *Ibid.*

Asking all jurors whether they have formed any opinion is one permissible way to inquire into their impartiality. But the method employed by the district court—a detailed questionnaire, followed by collective questioning, followed by the opportunity for individualized questioning of specific jurors identified by the parties—is another. And the selection of the procedure most appropriate to the circumstances of a particular case is a matter for the district court, which is in a far better position to determine the best approach. Even in those rare cases where this Court has held that a particular *issue* "must be 'covered' by the questioning of the trial court," it has been "careful not to specify the particulars by which this could be done." *Mu'Min*, 500 U.S. at 431; see, *e.g.*, *Ham* v. *South Carolina*, 409 U.S. 524, 527 (1973). Petitioner's insistence that the Sixth Amendment mandates a specific question is inconsistent with the broad deference to trial judges required by this Court's decisions.[11]

c. Finally, petitioner errs in contending (Pet. 33-35) that the court of appeals departed from decisions by this Court and other circuits by declining to

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[11] Petitioner errs in asserting (Pet. 32) that other courts have "required" his preferred question. Two of the three decisions he cites *rejected* challenges to voir dire. *United States* v. *Rahman*, 189 F.3d 88, 121 (2d Cir.), cert. denied, 528 U.S. 982 (1999), and 528 U.S. 1094 (2000); *Pruett* v. *Norris*, 153 F.3d 579, 587 (8th Cir. 1998). In the third, the district court failed to ask *any* questions about publicity. *United States* v. *Dellinger*, 472 F.2d 340, 374-375 (7th Cir. 1972), cert. denied, 410 U.S. 970 (1973). None of those decisions held that a particular question is constitutionally required. Indeed, the Second Circuit "appears never to have reversed a conviction for the failure to ask a particular question." *United States* v. *Lawes*, 292 F.3d 123, 129 (2002).

require individual questioning of every prospective juror who had any exposure to publicity.

This Court has never imposed such a rigid rule. *Mu'Min* upheld a voir dire where jurors were questioned in panels, and the Court *rejected* an approach that "would require that each potential juror be interrogated individually." 500 U.S. at 425. In *Skilling* v. *United States*, 561 U.S. 358 (2010), this Court approved a voir dire that included individual questioning, but it did not imply that such questioning is always required. Instead, the Court reiterated that "[n]o hard-and-fast formula dictates the necessary depth or breadth of *voir dire*." *Id.* at 386.

Petitioner's claim of a circuit split is equally unfounded. Some of the decisions he cites (Pet. 33-35) indicated that individualized questioning is preferred, relying on a guideline promulgated by the American Bar Association (ABA). *Patriarca* v. *United States*, 402 F.2d 314, 318 (1st Cir. 1968), cert. denied, 393 U.S. 1022 (1969); *Silverthorne* v. *United States*, 400 F.2d 627, 639-640 & n.13 (9th Cir. 1968). But those decisions did not purport to hold that such questioning is constitutionally required. See *Mu'Min*, 500 U.S. at 427. And any such holding would not have survived *Mu'Min*, which emphasized the deference owed to trial courts and declined to constitutionalize a related requirement from the ABA guideline. *Id.* at 430.

Petitioner's remaining cases involved procedures far more perfunctory than those employed here. He relies primarily on *United States* v. *Pratt*, 728 F.3d 463, 471 (5th Cir. 2013), cert. denied, 134 S. Ct. 1328 (2014), quoting that decision's statement that "merely asking potential jurors to raise their hands if they could not be impartial was not adequate voir dire in

light of significant pretrial publicity." But *Pratt* was describing an earlier case where the district court had asked only that "single, group question"; the court had "asked no follow-up questions and made no specific inquiries of *any* individual juror." *Ibid.* (emphasis added).[12] The district court here "did a good deal more," Pet. App. 28a, and petitioner cites no decision finding a comparable voir dire inadequate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[12] See *Jordan* v. *Lippman*, 763 F.2d 1265, 1281 (11th Cir. 1985) (no inquiry after the relevant publicity); *United States* v. *Rhodes*, 556 F.2d 599, 600-601 (1st Cir. 1977) (single group question about a highly prejudicial article published the day of trial); *Dellinger*, 472 F.2d at 367-376 (no inquiry into publicity). Petitioner's other two cases are even further afield. *Waldorf* v. *Shuta*, 3 F.3d 705 (3d Cir. 1993), was a civil case involving jurors who read and discussed a newspaper article *during trial*. *Id.* at 707, 713. And *United States* v. *Denno*, 313 F.2d 364 (2d Cir.) (en banc), cert. denied, 372 U.S 978 (1963), granted relief not because of any defect in voir dire, but because the bias in the relevant county was so great that "an impartial jury could not be obtained" by any procedure. *Id.* at 373.